

**CITY OF MIAMI BEACH**  
**Office of the City Manager**  
**Letter to Commission No. 165-2004**



**To:** Mayor David Dermer and  
Members of the City Commission

**Date:** June 28, 2004

**From:** Jorge M. Gonzalez  
City Manager

A handwritten signature in black ink, appearing to read "Jorge".

**Subject: TRANSMITTAL OF INTERNAL AUDIT ON BEACHFRONT CONCESSION  
AGREEMENT (BOUCHER BROTHERS MIAMI BEACH, LLC)**

Attached is the City's Internal Audit Report on the City's Beachfront Concession Agreement with Boucher Brothers Miami Beach, LLC. This regularly scheduled audit focused on the compliance with the concession agreement with the City and the verification of gross receipts reported by the concessionaire.

Internal Audit concluded that the concessionaire was essentially in compliance with the terms listed in the concession agreement, and that reported gross receipts, rental calculations, and rental payments were generally correct based on the documents provided. In addition, the City timely and correctly recorded all revenue, sales tax and State Beach Management Escrow (sand tax) receipts. Finally, all the Resort Tax filings for the sub-concessionaire were current.

Other points detailed in the report are summarized as follows:

- Internal controls and documentation procedures should be strengthened in order to facilitate the verification of gross receipts.
- Review of documentation provided by the concessionaire found minor errors whereby gross revenues were either incorrectly reported or omitted. These errors were corrected, and all amounts due were remitted to the City.
- The concessionaire should request evidence of receipt of payment from the City to eliminate any uncertainty regarding the timeliness of receipt of payments.
- The concessionaire and its sub-concessionaire did not completely satisfy section 4.1.2 of the concession agreement requiring minimum levels for capital expenditures prior to or on 03/05/02. However, the required levels were achieved as of 03/31/03.
- The sub-concessionaire added products and charged prices without first obtaining approval from the City when prices differed from those previously authorized by the City Manager in Exhibit 3.1.3.
- In order to facilitate the storage of chair pads, the concessionaire parked large trailers east of the dunes on the hard sand.
- The concessionaire was without an occupational license for their Miami Beach office since the inception of the concession agreement until recently obtaining

- one.
- Improvement is needed from the Office of Asset Management in monitoring for the timely submission of insurance policies by the concessionaire to help ensure that proper coverage is maintained.
- Improvement is needed from the concessionaire in satisfying City requests for documents.
- The concessionaire did not use receipt printing cash registers/Personal Digital Assistants for recording beachfront equipment rentals for a variety of reasons which were communicated to the City.

The reasons for some of the problems addressed in this report had to do with the beach concession agreement's language. Although it was basically well written and attempted to cover issues to a depth that had not been attempted in prior beach concession contracts, the agreement created some confusion as to what is practical and reasonable in several areas (i.e. the concessionaire's lack of available storage space, procedures for increasing prices, etc.). These issues and others points noted will be addressed during the current negotiations with the concessionaire.

A follow up to this report will be scheduled at the end of third year of the contract.

A copy of Internal Audit's report is attached for your review. If you have any further questions, please feel free to contact me.

JMG\KB\jjs

F:\budg\AUD\DOC03-04\report-final\TCBCBBAudit.doc

CITY CLERK'S OFFICE

04 JUL - 2 AM 11:08

RECEIVED

**CITY OF MIAMI BEACH**  
**INTERNAL AUDIT REPORT**

---



**DATE:** June 21, 2004

**TO:** Jorge M. Gonzalez, City Manager

**VIA:** Kathie G. Brooks, Budget and Performance Improvement Director

**FROM:** James J. Sutter, Internal Auditor

**SUBJECT:** **BEACHFRONT CONCESSION AGREEMENT AUDIT (BOUCHER BROTHERS MIAMI BEACH, LLC)**

**PERIOD:** November 5, 2001 through March 31, 2003

---

This report is the result of a regularly scheduled audit of the agreement between the City and the Boucher Brothers Miami Beach, LLC for providing beachfront concessions. A follow up to this report will be scheduled at the end of third year of the contract.

## **INTRODUCTION**

Penrod Brothers, Inc. was previously authorized by City Resolution 85-18222 and the related concession agreement to operate the beachfront food, beverage and beachfront equipment rental concessions at Pier Park, Oceanfront Park and Lummus Park. They operated under this agreement and various amendments until November 4, 2001 when Boucher Brothers Miami Beach, LLC was awarded the current beachfront contract. The adoption of City Resolution 2001-2646 authorized the new concessionaire to operate the beachfront food, beverage, sundry and equipment rental concessions at Lummus Park, North Shore Open Space Park and Ocean Terrace. This agreement expires on November 4, 2006 unless the five-year option period is implemented pending approval by both the City and the concessionaire.

Boucher Brothers Miami Beach, LLC is required to remit to the City either a sliding percentage between 15% and 25% of its food and beverage gross receipts (based on volume) and 20% of its beach equipment gross receipts, or a minimum guaranteed amount of \$412,500 per annum, whichever is greater. The first year's minimum guarantee amount was due on March 5, 2002, with all subsequent minimum guarantee payments due on the anniversary date of the Commencement Date (November 5<sup>th</sup>), and shall be increased by 5% each year. Meanwhile, the year end settlement (if applicable) is due on December 31st of each year during the initial term of the concession agreement.

The concessionaire also agreed to remit to the City 20% of its water sports' rentals and sundries sales' gross receipts, or a minimum guaranteed amount of \$30,000 per annum, whichever is greater. Said minimum guarantee shall be paid on March 5, 2002, and on

INTERNAL AUDIT REPORT  
BOUCHER BROTHERS MIAMI BEACH, LLC  
BEACHFRONT CONCESSION AGREEMENT AUDIT

June 21, 2004

the anniversary date of the Commencement Date (November 5<sup>th</sup>) each year thereafter, and shall be increased by 5% each year.

The concessionaire currently subcontracts with Monty's Miami Beach LLC to provide the food and beverage services on the beaches seaward of Lummus Park. In return, the concessionaire receives a management fee and each day's source documents (cash register tapes and inventory reports) shortly after the conclusion of each month. These revenues are included in the concessionaire's monthly gross receipts, as well as the year end settlement calculations. Additionally, the City's Resort Tax Section is entitled to receive a monthly remittance of 2% of the subconcessionaire's food and beverage taxable sales.

The administration and enforcement of the concession agreement is the responsibility of the Office of Asset Management. The Finance Department is responsible for the processing and recording of any payments received, including remitting 25% to the State of Florida as a sand tax for monies received from concessionaires for the use of the beaches according to our State Beach Management Agreement.

The following chart lists the total gross receipts reported by the Concessionaire and the revenues received by the City for the previous year as reported in a Letter to Commission dated 02/04/03. In addition, year two of the Concessionaire's contract was added for comparison purposes:

Concessionaire	Reported Gross Receipts	Increase over Previous Year	Revenues to the City *	Increase over Previous Year
Penrod Brothers (11/00-10/01)	\$1,728,360	n/a	\$259,254	n/a
Boucher Brothers (11/01-10/02)	\$2,539,093	\$810,733	\$471,755	\$212,501
Boucher Brothers (11/02-10/03) **	\$2,833,198	\$294,105	\$535,413	\$63,658

\* - In comparing revenues to the City, it should be noted that the Boucher Brothers contract provided a higher scale of percentage revenues to the City. Revenues are net of sales taxes.

\*\* - Amounts were added subsequent to audit period for comparison purposes.

## OVERALL OPINION

Overall, the City is pleased with the performance of the concessionaire in providing beachfront concession services with excellent customer service to the public. However, it was noted that certain contract provisions, while stringent, were not fully satisfied by the concessionaire.

Another underlying reason for some of the variances addressed in this report is the beach concession agreement's language. Although it was well written and attempted to cover

**INTERNAL AUDIT REPORT**  
**BOUCHER BROTHERS MIAMI BEACH, LLC**  
**BEACHFRONT CONCESSION AGREEMENT AUDIT**

June 21, 2004

issues in depth that had not been covered in prior beach concession contracts, it created some confusion as to what is practical and reasonable in several areas (i.e. the concessionaire's lack of available storage space, procedures for increasing prices, etc.). These issues and others should be addressed during the current negotiation period. In addition, the concessionaire may want to explore the need for hiring additional staff in performing duties in connection to the administration of the contract.

The concessionaire was essentially in compliance with the terms listed in the concession agreement. Reported gross receipts, rental calculations, and rental payments were generally correct based on the documents provided. Also, the City timely and correctly recorded all revenue, state sales tax and State Beach Management Agreement (sand tax) receipts. Finally, all the Resort Tax filings for the subcontractor (RTX #1695313) were current. The following items were noted in our audit:

- Internal controls and documentation procedures should be strengthened in order to facilitate the verification of gross receipts.
- Review of the concessionaire's provided documentation found minor errors whereby gross revenues were incorrectly reported or omitted to the City.
- The concessionaire should request receipt of payment from the City to eliminate any discrepancy of timeliness of receipt of payments.
- The concessionaire and its subconcessionaire did not completely satisfy section 4.1.2 of the concession agreement requiring minimum levels for capital expenditures prior to or on 03/05/02. However, the required levels were achieved as of 03/31/03.
- The subconcessionaire added products and charged prices that exceeded those previously authorized by the City Manager in Exhibit 3.1.3.
- In order to facilitate the storage of chair pads, the concessionaire parked large trailers east of the dunes on the hard sand.
- The concessionaire was without an occupational license for their Miami Beach office since the inception of the concession agreement until recently obtaining one.
- Improvement is needed from the Office of Asset Management in monitoring for the timely submission of insurance policies by the concessionaire to help ensure that proper coverage is maintained.
- Improvement is needed from the concessionaire in satisfying City requests for documents.
- The concessionaire did not use receipt printing cash registers/Personal Digital Assistants for recording beachfront equipment rentals for a variety of reasons which were communicated to the City.

**PURPOSE**

The purpose of this audit was to determine whether the concessionaire paid the correct monies based upon their supporting records, was otherwise in compliance with the

INTERNAL AUDIT REPORT  
BOUCHER BROTHERS MIAMI BEACH, LLC  
BEACHFRONT CONCESSION AGREEMENT AUDIT

June 21, 2004

concession agreement, and whether the City received and correctly recorded all revenue, sales tax, and State Beachfront Management Agreement (sand tax) monies.

**SCOPE**

1. Confirm by examination of the concessionaire's books, records and operation, that the concessionaire was using cash registers or other acceptable accounting control devices or records to control sales and that they calculated and timely paid the correct revenue in accordance with the concession agreement.
2. Confirm that the concessionaire has obtained the required City occupation licenses necessary to conduct business.
3. Confirm that the concessionaire has complied with selected criteria outlined in the concession agreement (i.e. capital expenditures, documentation submittal, etc.).
4. Confirm that all insurance requirements of the concession agreement were satisfied.
5. Confirm that the concessionaire has maintained the required performance bond and that it is sufficient to protect the City's interests.
6. Confirm that all beachfront rental revenues, State Beachfront Management Agreement monies, and sales taxes were correctly and timely recorded in the City Financial System.

**SUMMARY OF FINDINGS AND RECOMMENDATIONS**

1. Finding – Documentation and Internal Control Shortcomings  
A review of the Boucher Brothers Miami Beach, LLC's (concessionaire) documentation and internal controls revealed some shortcomings that precluded Internal Audit from feeling reasonably assured that all gross receipts were reported. These same concerns have hindered independent accounting firms from conducting an annual audit of the concessionaire's records and rendering an opinion. Consequently, the concessionaire has been unable to provide the City with an audited annual statement of gross receipts in compliance with section 6 of the concession agreement. The City's Administration is cognizant of this dilemma and steps are being taken to resolve this situation for future years.

Our testing did not discover any information leading us to suspect any significant shortages in revenues reported. Yet, we also feel that improvements can be made to strengthen the internal controls over revenue recognition. Consequently, Internal

Audit drafted and faxed a list of new procedures to be reviewed and discussed prior to being implemented by the concessionaire and subconcessionaire (see Exhibit A).

Recommendations

The Boucher Brothers should review Internal Audit's lists and formulate their opinions as to whether these recommended internal controls are feasible and cost-effective. Their feedback should be heard, measured and considered in the subsequent decision as to which new procedures should be implemented. However, the concessionaire should also remember that Exhibit A is a starting point and is not all-inclusive or an end-all as internal controls should be routinely reviewed and revised, as needed.

Management's Response - City's Asset Manager

Any procedure that would strengthen the internal controls and provide the Auditor and Finance Department a higher comfort level should be implemented. However, any such change in procedures should also be reflected in the amended Agreement and the specific alternate methodology be delineated.

Concessionaire's Response

Boucher Brothers Miami Beach L.L.C. ("BBMB") has accepted and plans to implement the recommendations from the City's Internal Audit Department ("IAD"); BBMB continues to monitor their own internal control procedures and make revisions as they are warranted.

IAD's inability to be assured of the completeness of gross revenues is a reflection of the beachfront concession and not the Concessionaire. It should be noted that three independent Certified Public Accounting firms have reviewed the City's beachfront concession Agreement and are unable to issue an unqualified audit opinion. Under the terms and conditions of the current Agreement and operations, it is not economically feasible to implement procedures in order to certify an audit.

2. Finding – Incorrectly Reported Remittances

Section 4.3.1 of the concession agreement states "*The term 'gross receipts' is understood to mean all income collected or accrued, derived by the Concessionaire under the privileges granted by this Agreement, excluding amounts of any Federal, State, or City sales tax*". The subsequent review of the Boucher Brothers Miami Beach, LLC and their subconcessionaire's records showed that the following gross receipts were omitted or incorrectly reported to the City during the fiscal year ending 11/04/02:

- a. The concessionaire has separate "Resort Fee Agreements" with some hotels to provide the hotel's registered guests certain beachfront amenities. Fees paid to the concessionaire are reported to the city and included in their

INTERNAL AUDIT REPORT  
BOUCHER BROTHERS MIAMI BEACH, LLC  
BEACHFRONT CONCESSION AGREEMENT AUDIT

June 21, 2004

gross receipts. The Concessionaire never received the Casa Grande Hotel's August 2002 resort fee, unbeknownst to the concessionaire. The concessionaire has been unable to collect this fee of \$2,875 from the previous owners as they have left the area and efforts to contact them have been unsuccessful.

Additional testing revealed that \$17,458.55 (excluding sales tax) earned in resort fees paid by the Pelican, Tides and Casa Grande Hotels were omitted from reported gross receipts. The concessionaire's current practice of entering the resort fees received into their daily rentals' worksheets, where it is combined with the day's chair, umbrella, cabana and towel rentals, has made it unnecessarily difficult to monitor and report accurately.

- b. An error in the concessionaire's master spreadsheet for June 2002's chair, umbrella and canopy rentals resulted in revenues being overstated by \$5,622 (excluding sales tax) for that month. Consequently, the City was inadvertently overpaid by a total of \$1,124.40 (excluding sales tax) on the payment received on 01/21/03.
- c. The concession agreement requires the concessionaire to operate in Ocean Terrace and North Shore Open Space Park. However, it was later learned that the concessionaire was unable to operate in both locations due to beach erosion and the resulting positioning of the lifeguard stations. The City was cognizant of this dilemma and permitted this change in operating area, until such time as the beach width and/or positioning of lifeguard stations, permitted resumption of operations.

Recommendation(s)

The concessionaire should remit \$3,148.28 to the City for the above errors noted in reporting revenues. ( $\$20,333.55 \times 20\% = \$4,066.71$ , less \$1,124.40 credit plus 7% sales tax). In addition, the concessionaire should implement the following recommendations to help ensure that the City receives the correct remittances:

- a. A separate Excel worksheet recording all the resort fees received should be maintained and monitored. It should be linked to the master spreadsheet and submitted annually to the City in support of the reported gross receipts' figure. Based on a prior verbal agreement with the City's Finance Director, the Boucher Brothers should include all resort fees in their calculations of amounts owed to the City, regardless of their collectibility.
- b. The concessionaire should continually review spreadsheet formulas for accuracy to help ensure that all purported figures are correct.
- c. The City's Administration should review these two northern locations again



to determine whether there is sufficient room to operate or the concession agreement should be amended. If business operations resume in either of these two locations, then the concessionaire should create a separate linked Excel spreadsheet to record and report each area's gross receipts. Fees on any recorded amounts should be remitted to the City.

Management's Response - City's Asset Manager

Although we were made aware of the Concessionaire's position that it could not operate due to insufficient beachfront and/or lifeguard stand location, there was no formal position taken by the City other than as reflected in the Agreement currently in force and effect. Inquiries have been made as to the current condition of the beachfront and location of the lifeguard stands, and it is our understanding that at both the North Shore Open Space Park location and the Ocean Terrace location, conditions are such that concession operations may be resumed, at minimum, on portions of each beach. As such, administration and enforcement of the applicable Agreement provisions will be pursued, if warranted.

Concessionaire's Response

The referenced missing Resort Fee data entries represent an insignificant omission (less than .0015% of yearly data entries) into BBMB's spreadsheet that was configured by management to allow for greater control of elements pertaining to finances and services. Nevertheless, immediately upon the notification by IAD, measures to segregate recording of monthly Resort Fees from daily operations were implemented as part of management's directive to continually enhance the reporting process.

IAD recommendations to review spreadsheet formulas have been implemented. A check in the amount of \$3,148.28 has been submitted to the City.

3. Finding – Evidence of Receipt of Payments

In reviewing for the concessionaire's timely receipt of payments, it was noted that there were minor differences between the Concessionaire's and the City records for evidencing the actual dates paid. Even though payments were made near or within the five-day period allowed by the default provision from the contract's due dates, there is a need to better document the actual date paid to avoid any future disagreement on the actual date of receipt.

Recommendation(s)

The concessionaire should obtain a time/date stamped receipt of their payments from the City for their records. This practice will help prevent any possible future disagreements from arising over when payment was actually received.

Management's Response - City's Asset Manager

The Office of Asset Management agrees with the IAD's recommendation, and

INTERNAL AUDIT REPORT  
BOUCHER BROTHERS MIAMI BEACH, LLC  
BEACHFRONT CONCESSION AGREEMENT AUDIT

June 21, 2004

recommends that Concessionaire have a copy of their check (or other form of payment) "stamped in" (or use other approved alternative method of confirmation) at the Finance Department when submitted to the City's Revenue Manager, as required.

Concessionaire's Response

Payments to the City have been made in compliance with the Concession Agreement and or official directives from the City Administration and Commission. BBMB awaits the City's Asset Management Department decision to develop and implement the recommendation by Internal Audit.

4. Finding – Capital Expenditures

Section 4.1.2 of the concession agreement requires the concessionaire to purchase by 03/05/02 at least \$680,000 in capital expenditures that satisfy one of Exhibit 3.1.3's categories (chairs, umbrellas, sun canopies, storage/work facilities, storage, and food and beverage trailers). In addition, the concessionaire was required to purchase at least \$120,000 in ancillary related capital expenditures or items that do not fall into one of the aforementioned six categories.

Review of the invoices provided by the concessionaire and their subconcessionaire showed that they had purchased \$592,625.45 in Exhibit 3.1.3 categories and \$97,009.97 in ancillary-related items as of 03/05/02. These figures include a total of \$60,200 (\$31,950 from Hagen Daz and \$28,250 from Pepsi) in products that were received by the subconcessionaire at no capital outlay in return for using the vendor's products. Further analysis showed that these amounts increased to \$704,203.96 and \$177,849.25 respectively as of 03/31/03 thereby subsequently satisfying the concession agreement's minimum capital expenditures' requirements.

In addition, Exhibit 3.1.3 lists the maximum number of items per category that the concessionaire and their subconcessionaire can use on the beach. Subsequent observations and review of documentation showed that all categories were within prescribed limits except for the subconcessionaire's use of food and beverage trailers or kiosks. They routinely deployed ten kiosks on weekends in Lummus Park to accommodate the increased number of beachgoers while the agreement stipulates that only a maximum of eight are allowed.

Recommendation(s)

The City's Administration should decide what action to take, if any, against the concessionaire for not meeting the capital expenditures minimum requirements by 03/5/02 and for the subconcessionaire using an excessive number of kiosks on weekends. In addition, these issues can be addressed by modifying the agreement during the current negotiations between parties.

Management's Response - City's Asset Manager

With regard to the capital expenditures, it is our opinion that the concessionaire provided, at minimum, enough equipment and services during the initial "ramp-up" period to accommodate public demand for products and services and ultimately demonstrated full compliance by March 31, 2002. We are of the opinion that inclusion of said capital expenditures in the Agreement was necessary in order to ensure, at minimum, that adequate inventory was available to provide the applicable services to the beach-going public.

With regard to the number of kiosks, notwithstanding the argument that said numbers were increased due to public demand, more consistent and continuous monitoring of the concession areas would have identified this problem in a timelier manner. However, resources dedicated to monitoring the beaches citywide are not sufficient to provide adequate coverage and enhancement of same should be considered. We do agree with the IAD's comments that this issue (number of kiosks) should be included in any amendment to Agreement, if negotiated. However, compliance with the Agreement (as may be amended) will be pursued.

Concessionaire's Response

We believe IAD's interpretation of the Capital Expenditure calculation is incorrect. IAD's non-recognition of submitted expenditures (through value added and in-kind value) and timing of such create an illusion of non-compliance. In fact, BBMB and its sub concessionaire not only complied with the capital expenditures requirement, but exceeded it, and did so within the allotted deadlines.

With both parties having no experience in public park beaches, the ability of the Administration and Concessionaire to negotiate the estimate of Capital Expenditures six months prior to the implementation of the concession agreement proved to be inadequate and pointless. Moreover, in retrospect, memorializing on when those expenditures should take place bordered on irrelevant.

Regardless of whether the Concessionaire's or IAD's interpretation of compliance with the section in question is correct, we believe that particular section was ill conceived in its focus on monetary expenditures rather than the real goal of upgrading both the quantity and quality of equipment.

Auditor's Comments

We recognize that the real goal of updating the quality and quantity of the beach equipment was met by the concessionaire thereby providing the City's users with improved products. However, in auditing the stringent provisions in the concessionaire agreement regarding capital expenditures for compliance, we stand by our analysis as being correct.

5. Finding – Food and Beverage Product and Price Changes

Exhibit 3.2.1 of the concession agreement lists the food and beverage products and prices (including a footnote that prices are subject to change within a 15% range) to be sold in Lummus Park. Furthermore, section 3.2.1 of the concession agreement requires any amendments to Exhibit 3.2.1 be approved in writing by the City Manager or his designee prior to such changes being implemented. In addition, a new updated Exhibit 3.2.1 should be submitted and incorporated into the concession agreement.

The Office of Asset Management previously noticed during a 05/02/02 site visit that the subconcessionaire had increased food and beverage prices within the 15% range without notifying the City. They also discovered that a new product, So Be Energy Drink, was now being sold and that both the potato chip bag size and price had doubled. The Office of Asset Management quickly drafted a 05/07/02 memorandum that resulted in a new updated Exhibit 3.2.1 being submitted.

Internal Audit's 03/28/03 site visit found that the subconcessionaire had again increased food and beverage prices within the 15% range specified in the initial concession agreement's Exhibit 3.2.1 without notifying the City. The Office of Asset Management was not cognizant of these increases and had not received a new updated exhibit as of the conclusion of this audit.

Recommendation(s)

The concessionaire can be held accountable for any inappropriate price increases taken by their subconcessionaire. Therefore, the concessionaire should notify and obtain the City's approval where applicable to add products or raise prices prior to implementation. The agreement should also be modified to state that the 15% pricing range applies only to the prices listed on the initial Exhibit 3.2.1. and not to the subsequently submitted exhibit(s) prices.

In addition, the Code Compliance Officer assigned to assist the Office of Asset Management in monitoring beach concessions should conduct more frequent reviews of concessionaire pricing to ensure compliance with this provision. Also, this monitoring responsibility should be rotated between different officers.

Management's Response - City's Asset Manager

More consistent and continuous monitoring of the concession areas would identify this problem in a timelier manner. However, currently resources dedicated to monitoring the beaches are not sufficient to provide adequate coverage and enhancement of same should be considered. Additional code compliance staff hours or the hiring of another dedicated position should be considered as possible solutions.

Concessionaire's Response

The sub-concessionaire has been notified by the City and in writing by BBMB of the proper procedures for increasing food and beverage prices.

6. Finding – Trailers on the Beach

Two large storage trailers were observed on the hard sand east of the dunes on 03/28/03. The concessionaire used these trailers mainly to store chair pads as they were removed from the beach at the end of each day. The concessionaire's reasoning was that the contract allows them to place 2,000 chairs daily in Lummus Park but it did not provide sufficient storage in close proximity for the 2,000 chair pads. However, the concession agreement does not grant the concessionaire the ability to position or park these trailers east of the dunes.

The Office of Asset Management subsequently confirmed this fact and stated that they have verbally notified the concessionaire of the need to remove these trailers on several occasions. In order to work out a solution, the City is working with the concessionaire to provide a storage cell west of the sand dunes at 10<sup>th</sup> Street next to the Beach Patrol's Headquarters.

Recommendation(s)

Only authorized items per the concession agreement should be stationed on the hard sand east of the dunes. Although the City acknowledges the concessionaire's storage problems and the need to access the chair pads, other short term alternatives should be discussed until the planned construction of a storage cell is completed. The City needs to expedite the approval of the concessionaire's request for the storage cell.

Any future notices from the Office of Asset Management should be in writing and placed in the contract's file.

Management's Response - City's Asset Manager

Approval of storage cell, if the terms and conditions are agreed upon, will occur concurrently with the execution of the amended Agreement that is being negotiated. The City has met with Concessionaire and its fence contractor and had several discussions regarding same, but to date no plans reflecting the exact location, layout, and design have been submitted for the City's approval, as mutually agreed. Once received, said approval will be expedited. Until such time as the Agreement is amended, administration and enforcement of the current Agreement will be pursued. As recommended by the IAD, all future notices related to inconsistencies with the provisions in the Agreement will be forwarded to Concessionaire in writing.

Concessionaire's Response

With both parties having no experience in the operations of public park beaches,

the ability of the Administration and Concessionaire to negotiate the amount of storage containers within the Concession area prior to the implementation of the concession agreement proved to be inadequate. Moreover, under the Design Review process almost the entire City's approved "Work/Storage Huts" and "Storage Containers" have proved to be non-functional in meeting the demands of consumers on the beach. Lastly, to meet the consumer demand and the constraints of the Chair Deployment regulation included in the Agreement by the City Commission (limiting quantity of equipment stored on the beach and initial set-up on the beach), BBMB was left with no choice but to make a capital expenditure for trailers to meet consumer demand.

7. Finding - Required Occupational Licenses Not Timely Obtained

Section 3.8 of the concession agreement states "*Concessionaire shall obtain, at its sole cost and expense, any occupational licenses required by City law*". The concessionaire moved their main offices in November 2002 from the Fountainbleau Hilton to their present location in the Roney Plaza at 2301 Collins Avenue. During the audit it was noted that the concessionaire did not have an occupational license for either of these offices. Upon notification by us the concessionaire applied for and received the license.

Recommendation(s)

The Office of Asset Management should periodically review for compliance of required licenses for contracts under their control.

Management's Response - City's Asset Manager

It is our understanding that the City's Code Compliance Division is responsible for the enforcement of Occupational License provisions. From a contractual perspective, it may be argued that we should ensure that the Concessionaire complies with licensing the contract locations and obtains the required licenses to operate the contract related business. However, their failure to obtain other business licenses, or any other required permits and authorizations, whether municipal, county, state or federal, required of the Concessionaire's company or companies should be pursued by the applicable governing agency, as we do not have the expertise to determine the full array of requirements for their respective business operations. In lieu of having to become license sleuths, it may be more practical to initiate default if it is discovered that concessionaire is in non-compliance of these provisions and we will do so accordingly.

Concessionaire's Response

The BBMB Office Manager mistakenly presumed that a Miami-Dade County Occupational License was all that was needed.

8. Finding - Insurance Shortcomings

The City's Risk Manager did not have a current copy of the concessionaire's

insurance policies and therefore, could not have approved it. A copy of their insurance policies were requested and received promptly from Boucher Brothers Miami Beach, LLC on 03/20/03. The insurance policies were subsequently forwarded to Risk Management and approved by the City's Risk Manager on 03/31/03.

The Office of Asset Management created and maintains a data base to track the insurance carried by all concessionaires and lessees. However, it was noted that this data base was not being actively maintained and monitored thereby allowing businesses, concessionaires, etc. to operate with the possibility of not having the required insurance coverage.

Recommendation(s)

All insurance policy correspondence should be furnished timely to the City's Risk Manager so that it can be monitored and reviewed for compliance to the terms listed in the applicable concession agreement. A copy should be subsequently forwarded to the Office of Asset Manager so that it can be timely and properly entered into their current insurance database. Finally, the City's Asset Manager should monitor this database and actively pursue follow-up actions against those businesses that have not complied.

Management's Response - City's Asset Manager

As stated above, there is a process used to manually monitor and track insurance requirements, and every effort is made to keep this information updated. However, resources required to actively maintain these are not always available, especially in light of the multitude of agreements that are managed. In addition, it was my understanding that Risk Management kept files on all approved insurance policies.

It may be worthwhile requesting that an automated tickler system be developed that would automatically report (daily or weekly) expiration dates of all policies required by the City.

Concessionaire's Response

Current practice of BBMB and all Boucher Brothers affiliates is to have their insurance agent send copies of certificates of insurance sent to all Risk Managers of entities in which they conduct business. The City of Miami Beach was no exception. While the above referenced insurance was always in place, an error by the Insurance Agent occurred when the certificate was not forwarded to the City. Upon notification by Internal Audit, a copy of the certificate was immediately sent to the City.

9. Finding – *City Requested Documents Not Furnished Timely*

Section 5 states "A monthly report of gross receipts must be submitted to the City, through the Finance Department's Revenue Supervisor, to be received no later than thirty (30) days after the close of the month". These monthly reports have

INTERNAL AUDIT REPORT  
BOUCHER BROTHERS MIAMI BEACH, LLC  
BEACHFRONT CONCESSION AGREEMENT AUDIT

June 21, 2004

never been received by the Finance Department. Conversely, the City has not made any attempts to request and collect this information from the concessionaire. Therefore, the City has no forewarning as to the amount of the concessionaire's lump sum annual settlement (if any) due at year end.

In addition, the Office of Asset Management mailed a 03/17/03 letter to the concessionaire concerning amended and restated rules and regulations for beachfront concession operations. This letter also required the Boucher Brothers Miami Beach, LLC to return by 03/31/03 a listing of vehicles driven on the beach and copies of the automobile insurance coverage maintained. However, this needed document was not completed and furnished to the Office of Asset Management as of the conclusion of this audit.

Also, the concessionaire was instructed in a 03/07/03 meeting with City Administration to open a new resort tax account in their name to report all the food and beverages sold on the beach. Although the subconcessionaire's resort tax account is current, the City's Chief Financial Officer's concern is that the City's concession agreement is with Boucher Brothers Miami Beach, LLC. Consequently, the City would not have recourse against the subconcessionaire if they failed to make the necessary monthly payments.

Recommendation(s)

The concessionaire should make a more concerted effort to timely satisfy all requests and abide by City instituted due dates unless an extension is granted. The concessionaire should consider employing someone to assist them with the various required administrative tasks of the concession agreement. Any deficiencies should be documented and conveyed to the concessionaire so that their performance can be better measured and evaluated.

Management's Response - City's Asset Manager

The Agreement requires that a monthly report of gross receipts be submitted to the City, through the Finance Department's Revenue Supervisor, to be received no later than thirty (30) days after the close of each month. As stated previously, we will endeavor to notify the Concessionaire in writing of any deficiencies that we discover or are made aware of. A notification process between Finance Department and Asset Management, similar to that which was implemented to confirm timely rent payments, should be initiated.

Concessionaire's Response

In the past monthly reports have been submitted to the office of Asset Management. In the future, in the renegotiated Agreement with the City, monthly reports will be submitted within 60 days in arrears and will also be submitted to the Finance Department. A list of vehicles has been submitted to the City. A new Resort Tax account has been opened and payments to the account will be initiated



in January 2004.

10. Finding – *Personal Digital Assistant Devices Not Used for Recording Equipment Rentals.*

Section 5 of the concession agreement states "*Concessionaire shall maintain accurate receipt-printing cash registers or a like alternative in all Concession Areas which will record and show the payment for every sale made or service provided in such Areas*". The concessionaire in their response to the City's Request for Proposal specified that they would develop a computerized system and utilize Personal Digital Assistants (PDAs) equipment to record these sales.

The concessionaire purchased PDAs and had software developed totaling \$24,796. Two members of the City Administration were shown a working demonstration of this new product.

During implementation, the concessionaire encountered several problems with the new system on the beach, which they determined made it impracticable. These shortcomings consisted of the following: a) each transaction took too long to process (20 to 30 seconds); b) the length of the custom made cable was too long; c) sand would jam the printer compartment; d) the PDAs are susceptible to theft, e) the correction of any mistakes made required a visit from a supervisor thereby making the customer wait for his arrival; and f) the equipment can be easily damaged by the beach elements (i.e. salt air, rain). The City was cognizant of these problems and has allowed the concessionaire to operate without the PDAs.

In lieu of the PDAs, the concessionaire utilized a manual paper system in which each transaction is recorded on a daily revenue sheet. Supervisory controls consist of onsite inspections by the concessionaire manager and an additional oversight reviews by the concessionaire management.

Internal Audit requested a working demonstration of the PDAs on several occasions during the audit to substantiate their issues. However, the concessionaire could not recall how to operate the installed software designed by Alternet, Inc.

Recommendation(s)

Technology has improved greatly over the last couple of years since the concessionaire initially purchased the PDAs. Therefore, the concessionaire should research the currently available products and software to determine if enough of the aforementioned shortcomings could be overcome to warrant the purchase and implementation of the PDAs. The results of the concessionaire's research should be documented and furnished to the City Administration for review and a final decision regarding their usage.

Management's Response - City's Asset Manager

We have not had the PDA's demonstrated to us, thus are unable to comment on the operation of same, but we would encourage pursuing the PDA's or other similar electronic procedures that would provide comparable results. However, any alternative process that is found to be acceptable to the Auditor and the Finance Department may also be considered. We have urged Concessionaire to meet and satisfy the City's Chief Financial Officer with an acceptable procedure as approved and auditable by a Certified Public Accountant. This has been one of the primary issues which has delayed pursuing the amendment to contract to correct inconsistencies in contract language.

Concessionaire's Response

To be clear, the Concessionaire is in compliance with Section 5 of the Concession Agreement. *"Concessionaire shall maintain accurate receipt-printing cash registers or a like alternative in all Concession Areas which will record and show the payment for every sale made or service provided in such Areas"*.

With both parties having no prior experience in public park beaches, it was ill advised of the Administration and Concessionaire to negotiate the usage of PDAs, as this was contrary to providing quality customer service. From day one, BBMB has made the Administration aware of problems surrounding the PDAs. From development to implementation, the PDAs have not proved to be practical. As a result of our prompt notification of the problems encountered, the City and BBMB were able to implement manual control procedures in addition to electronic cash registers to adequately substitute for the controls expected to be provided by the PDAs. The usage of PDAs is not a factor in compliance with Section 5.

**EXIT CONFERENCE**

Findings and recommendations were discussed with the concessionaire, subconcessionaire and applicable members of the City Administration on several occasions over an extended period of time due to scheduling difficulties and the complexity of the concession agreement. Their management responses were subsequently incorporated into the audit report. All were in agreement with the contents of this report. A follow-up to this report will be made at the end of this year.

JJS:mc (audit performed by Mark Coolidge)

F:\budget\AUDIDOC02-03\REPORTS\BOUCHERRPT.doc

Attachment: Exhibit A

cc: Christina Cuervo, Assistant City Manager  
Patricia Walker, Director, Finance Department  
Jose Damien, Asset Manager, Office of Asset Management  
Boucher Brothers Miami Beach, LLC

**EXHIBIT - A     Recommendations for Improving Documentation**  
**BOUCHER BROTHERS BEACH CONCESSIONAIRE - LUMMUS PARK**  
City of Miami Beach Internal Audit Department  
March 28, 2003

---

**Beachfront Concessions Revenues:**

1. Daily rental sheets are used for each open section. The section's attendant should enter each transaction with as much detail as possible in the applicable sections, including the header. The supervisor and the Boucher Brothers should periodically perform counts to ensure the accuracy of the daily rental sheets. Evidence of this revenue should be noted on the daily rental sheet. Also, all daily rental sheets should be accounted for and submitted to the Boucher Brothers.
2. The supervisor uses daily collection sheets to record all monies received from the section attendants. All applicable entries should be made in as much detail as possible, including the header. This form must be dated. Also, the Boucher Brothers should ensure that all daily collection sheets are accounted for.
3. Section "Open and Closed" sheet should be developed listing each section of Lummus Park. This form could be used by the Supervisor in documenting which sections are opened and closed for the day. As each section is opened, the time is recorded in the section row. As sections are closed the time is noted on the form. The Boucher Brothers would sign off their review of this form when they perform their spot check for the supervisor's work. Notations could be made on this form noting the reasons for any days in which no or little revenues were received due to inclement weather, special events, etc.
4. Bank deposits should be made intact for each day's revenues received from Lummus Park. The Boucher Brothers Management should reconcile the bank deposit amount to the supervisor's daily collection sheets.
5. A record should be maintained of all secret shoppers' results and any corresponding actions taken. They should be used routinely at various locations to determine the honesty of the Boucher Brothers' employees.
6. The Boucher Brothers should document their spot checks of the supervisor. They should initial the supervisor daily collection sheet to evidence their review. Any appropriate comments should be noted on the sheet.
7. Pre-numbered water sports' contracts are required to be completed by each patron. They should be issued in sequential order. The Boucher Brothers should ensure that all contracts are accounted for as well as perform periodic reconciliations of the contracts and the daily rental sheets/daily collection sheets. Any differences should be investigated immediately.
8. Daily reports should be received from the applicable hotels (i.e. Casa Grande, Pelican and the Tides) listing all the rooms rented. A copy should be distributed to each applicable section attendant so that they can ensure that the person(s) is actually a guest of the hotel. A final monthly report should be received from the hotel which serves as the basis for the final monthly settlement. The Boucher Brothers should review the supporting documentation to help ensure the accuracy of the payment. Also, the daily reports should

**EXHIBIT - A**      Recommendations for Improving Documentation  
**BOUCHER BROTHERS BEACH CONCESSIONAIRE - LUMMUS PARK**  
City of Miami Beach Internal Audit Department  
March 28, 2003

---

be compared to the monthly reports received from the hotel. Any differences should be questioned and investigated immediately.

9. Inventory reports should be maintained by a supervisor for all sundry items issued to section attendants. These inventory reports should be compared to the daily collection sheets and the monies received to help ensure that all monies were collected. Accordingly, controls must be in place over the issuance and distribution of sundries.

**Food and Beverage Revenues:**

1. The daily envelope should always contain the original cash register tapes, handwritten daily inventory sheets for each location, computerized daily inventory sheets for each location and a computerized summary of each day's sales. Closed due to inclement weather, special event, staffing problems, etc. should be documented. Reconciliations should be performed daily between the aforementioned sheets with all differences documented and investigated immediately.
2. Both the attendant and a supervisor should sign off on the daily inventory sheets indicating their attestation to the accuracy of the beginning and ending inventory counts. Also, the addition or subtraction of inventory listed on the daily inventory sheets should be evidenced by the initialing of both the attendant and the supervisor. Any differences between the prior day's ending inventory and the next day's beginning inventory should be documented and investigated.
3. The food and beverage should be packaged in a manner that indicates that it was furnished by Monty's. Precautions should be taken to help ensure that attendants do not bring their own cups, etc. and pocket or keep the corresponding monies.
4. Secret shoppers should also be employed to conduct surprise visits on the food and beverage attendants to verify that all revenues are being recorded, that applicable prices are being charged and that only Monty's furnished products are being sold. Results should be documented and kept on file.
5. Periodic reconciliations of Monty's food and beverage revenues should be completed via analysis of the inventory reports and the cash register tapes. The supervisor should also make note on his daily collection sheets which kiosks were open to help ensure that all revenues are received.

F:\budg\SAUD\DOC02-03\PCWORK\BOUCHER BROTHERS\recomcontrols.doc